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8 BIGBATTERY, INC., a California
9 Corporation;

10 Plaintiff,

11 -vs-

12 ICON EV LLC, a Florida Limited
13 Liability Company; and DOES 1
14 through 20, inclusive,

15 Defendants.

16 Case No: 2:23-cv-05478-PA-PVCx

17 **STIPULATED PROTECTIVE
18 ORDER**

19 **1. A. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential,
21 proprietary, or private information for which special protection from public disclosure
22 and from use for any purpose other than prosecuting this litigation may be warranted.
23 Accordingly, the parties hereby stipulate to and petition the Court to enter the
24 following Stipulated Protective Order. The parties acknowledge that this Order does
25 not confer blanket protections on all disclosures or responses to discovery and that the
26 protection it affords from public disclosure and use extends only to the limited
27 information or items that are entitled to confidential treatment under the applicable
28 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
that this Stipulated Protective Order does not entitle them to file confidential
information under seal. Civil Local Rule 79-5 sets forth the procedures that must be

1 followed and the standards that will be applied when a party seeks permission from the
2 court to file material under seal.

3 **B. GOOD CAUSE STATEMENT**

4 This action is likely to involve trade secrets, customer and pricing lists and
5 other valuable research, development, commercial, financial, technical and/or
6 proprietary information for which special protection from public disclosure and from
7 use for any purpose other than prosecution of this action is warranted. Such confidential
8 and proprietary materials and information consist of, among other things, confidential
9 business or financial information, information regarding confidential business practices,
10 or other confidential research, development, or commercial information (including
11 information implicating privacy rights of third parties), information otherwise
12 generally unavailable to the public, or which may be privileged or otherwise protected
13 from disclosure under state or federal statutes, court rules, case decisions, or common
14 law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution
15 of disputes over confidentiality of discovery materials, to adequately protect
16 information the parties are entitled to keep confidential, to ensure that the parties are
17 permitted reasonable necessary uses of such material in preparation for and in the
18 conduct of trial, to address their handling at the end of the litigation, and serve the ends
19 of justice, a protective order for such information is justified in this matter. It is the
20 intent of the parties that information will not be designated as confidential for tactical
21 reasons and that nothing be so designated without a good faith belief that it has been
22 maintained in a confidential, non-public manner, and there is good cause why it should
23 not be part of the public record of this case.

24 **2. DEFINITIONS**

25 2.1 Action: this pending federal lawsuit, *BigBattery, Inc. v. ICON EV LLC*,
26 2:23-cv-05478-PA-PVC

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
28

1 information or items under this Order.

2 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
3 how it is generated, stored or maintained) or tangible things that qualify for protection
4 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
5 Cause Statement.

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
7 support staff).

8 2.5 Designating Party: a Party or Non-Party that designates information or
9 items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL.”

11 2.6 Disclosure or Discovery Material: all items or information, regardless of
12 the medium or manner in which it is generated, stored, or maintained (including, among
13 other things, testimony, transcripts, and tangible things), that are produced or generated
14 in disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this Action.

18 2.8 House Counsel: attorneys who are employees of a party to this Action.
19 House Counsel does not include Outside Counsel of Record or any other outside
20 counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association, or
22 other legal entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
24 this Action but are retained to represent or advise a party to this Action and have
25 appeared in this Action on behalf of that party or are affiliated with a law firm which
26 has appeared on behalf of that party, and includes support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors,
28 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.13 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
7 their employees and subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
11 from a Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected
14 Material (as defined above), but also (1) any information copied or extracted from
15 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
16 Material; and (3) any testimony, conversations, or presentations by Parties or their
17 Counsel that might reveal Protected Material.

18 Any use of Protected Material at trial shall be governed by the orders of the
19 trial judge. This Order does not govern the use of Protected Material at trial.

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
23 in writing or a court order otherwise directs. Final disposition shall be deemed to be
24 the later of (1) dismissal of all claims and defenses in this Action, with or without
25 prejudice; and (2) final judgment herein after the completion and exhaustion of all
26 appeals, rehearings, remands, trials, or reviews of this Action, including the time
27 limits for filing any motions or applications for extension of time pursuant to applicable
28 law.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

3 Designations that are shown to be clearly unjustified or that have been
4 made for an improper purpose (e.g., to unnecessarily encumber the case development
5 process or to impose unnecessary expenses and burdens on other parties) may expose
6 the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.

10 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
13 under this Order must be clearly so designated before the material is disclosed or
14 produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
18 Producing Party affix a minimum, the legend "CONFIDENTIAL" (hereinafter
19 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
20 portion or portions of the material on a page qualifies for protection, the Producing
21 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
28 wants copied and produced, the Producing Party must determine which documents, or

1 portions thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
3 each page that contains Protected Material. If only a portion or portions of the material
4 on a page qualifies for protection, the Producing Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify the
7 Disclosure or Discovery Material on the record, before the close of the deposition all
8 protected testimony.

9 (c) for information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material. Upon
18 timely correction of a designation, the Receiving Party must make reasonable efforts to
19 assure that the material is treated in accordance with the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s Scheduling
23 Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
28 to harass or impose unnecessary expenses and burdens on other parties) may expose

1 the Challenging Party to sanctions. Unless the Designating Party has waived or
2 withdrawn the confidentiality designation, all parties shall continue to afford the
3 material in question the level of protection to which it is entitled under the Producing
4 Party's designation until the Court rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a Receiving
11 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party
13 at a location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving
17 Party may disclose any information or item designated “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
19 as employees of said Outside Counsel of Record to whom it is reasonably necessary
20 to disclose the information for this Action

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this Action;

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

28 (f) professional jury or trial consultants, mock jurors, and Professional Vendors

1 to whom disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action
6 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
7 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
8 permitted to keep any confidential information unless they sign the “Acknowledgment
9 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
10 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal Protected Material may be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this Stipulated
13 Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel, mutually
15 agreed upon by any of the parties engaged in settlement discussions.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
17 PRODUCED IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation that
19 compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to
24 issue in the other litigation that some or all of the material covered by the subpoena or
25 order is subject to this Protective Order. Such notification shall include a copy of this
26 Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by
28 the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days

1 of receiving the notice and accompanying information, the Receiving Party may
2 produce the Non-Party's confidential information responsive to the discovery request.
3 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
4 any information in its possession or control that is subject to the confidentiality
5 agreement with the Non-Party before a determination by the court. Absent a court
6 order to the contrary, the Non-Party shall bear the burden and expense of seeking
7 protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has
10 disclosed Protected Material to any person or in any circumstance not authorized
11 under this Stipulated Protective Order, the Receiving Party must immediately (a) notify
12 in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
13 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
14 persons to whom unauthorized disclosures were made of all the terms of this Order, and
15 (d) request such person or persons to execute the "Acknowledgment and Agreement to
16 Be Bound" that is attached hereto as Exhibit A.

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
18 PROTECTED MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other protection,
21 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
23 may be established in an e-discovery order that provides for production without prior
24 privilege review. Further, pursuant to Federal Rule of Evidence 502(d) and (e), the
25 parties agree such inadvertent disclosure does not constitute a waiver of the applicable
26 privilege or protection.

27 12. MISCELLANEOUS

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of

1 any person to seek its modification by the Court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this
3 Protective Order, no Party waives any right it otherwise would have to object to
4 disclosing or producing any information or item on any ground not addressed in this
5 Stipulated Protective Order. Similarly, no Party waives any right to object on any
6 ground to use in evidence of any of the material covered by this Protective Order.

7 12.3 Filing Protected Material. A Party that seeks to file under seal any
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
9 only be filed under seal pursuant to a court order authorizing the sealing of the specific
10 Protected Material at issue. If a Party's request to file Protected Material under seal is
11 denied by the court, then the Receiving Party may file the information in the public
12 record unless otherwise instructed by the court. A party may offer Protected Material as
13 evidence at a hearing or trial provided that the offering party provides notice to the
14 designating party. Without limiting the manner in which such notice may be provided,
15 the inclusion of Protected Material in an exhibit list or deposition designation shall
16 constitute notice under this paragraph.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within
19 60 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in
21 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving
24 Party must submit a written certification to the Producing Party (and, if not the same
25 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
26 category, where appropriate) all the Protected Material that was returned or destroyed
27 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

1 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
2 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials contain
5 Protected Material. Any such archival copies that contain or constitute Protected
6 Material remain subject to this Protective Order as set forth in Section 4.

7 14. Any violation of this Order may be punished by any and all appropriate
8 measures including, without limitation, contempt proceedings and/or monetary
9 sanctions.

10
11 FOR GOOD CAUSE SHOWN BY THE PARTIES' STIPULATION, IT IS SO
12 ORDERED.

13
14 DATED: May 2, 2024



15
16 Hon. Pedro V. Castillo
17 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *BigBattery, Inc. v. ICON EV LLC*, 2:23-cv-05478-PA-PVC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: